IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 225 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL ISHVARBHAI BECHARBHAI

Versus

PATEL JIVIBEN DAUGHTER OF NATHABHAI BHAGABHAI

Appearance:

1. Special Civil Application No. 225 of 1988

MR PRASHANT G DESAI for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/09/2001

ORAL JUDGEMENT

#. Heard Mr.Prashant G. Desai, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP for respondent No.2. Notice of Rule has been

served on respondent No.1

#. The petitioner of this petition had filed Tenancy Case No.239 / 1976 before the Mamlatdar and ALT, Visnagar who has passed the order on 17th November, 1975 ordering the sale of Survey No.561 and 562 in favour of the petitioner. Being aggrieved by the said order, the respondent No.1 has approached the appellate authority by way of appeal being Appeal No.182 / 1983 before the Assistant Collector, Mehsana. However, the appellate authority by his order dated 31st May, 1984 dismissed the appeal as time barred. Against the said order of the Deputy Collector, the respondent No.1 has filed revision application under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Gujarat Revenue Tribunal while dealing with Revision Application No.1015 / 1984 allowed the revision application and the order of Mamlatdar, Visnagar and the Deputy Collector are set aside by the revisional authority. Therefore, against that order, present petition has been filed by the present petitioner who is tenant of the disputed land.

#. In the present petition, RULE has been issued by this Court on 19th January, 1988 and by way of interim order, status quo has been directed to be maintained by the respective parties.

#. During the pendency of this petition, the petitioner and the respondent No.1 has arrived at an agreement between the petitioner and respondent No.1 dated 1st February, 2001 and the said agreement has been placed before this Court on 8th February, 2001. When the agreement was placed before this Court, learned AGP Ms.Talati has objected to the matter being settled between the parties, since according to her, the petitioner has not lodged a claim for declaration of the tenancy right over the land in question as provided under Section 70 [b] of the Tenancy Act. Unless the petitioner is declared to be a tenant in accordance with law, the tenancy right can not be conferred by mere agreement between the parties. This Court while passing the order on 8th February, 2001 has observed that the objection raised by Ms. Talati seems to be valid and further observed that the effect of the above agreement shall be considered at the time of hearing of the main petition.

#. Today, the matter matter is taken up for hearing. This Court has heard learned advocate Mr.Prashant G. Desai for the petitioner. Rule has been served to the respondent No.1 and learned AGP Mr.S.P.Sen is appearing on behalf of the respondent No.2. The petitioner and the

respondent No.1 has arrived at an agreement and understanding with the help of leaders of the caste and they agreed that the order passed by the Mamlatdar under Section 32 [o] dated 17th November, 1975 has been accepted between the parties as final and they further agreed to accept the order passed by the Mamlatdar, Visnagar dated 17th November, 1975. Accordingly, the respondent No.1 is agreed to accept the petitioner as tenant and they are also agreed to withdrawn all the objections against the order dated 17th November, 1975. In view of above situation, now they request this Court that considering the agreement arrived at between the parties, necessary order may be passed in the present petition.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondent has no objection for recording the said agreement since both the parties are agreed to accept the orders passed by the Mamlatdar, Visnagar dated 17th November, 1975. I have also considered the agreement and perused the same. The order passed by the Mamlatdar, Visnagar dated 17th November, 1975 declaring the petitioner as tenant while initiating the proceedings under Section 32 [o] and the fact that now the respondent No.1 has agreed to accept the order passed by the Mamlatdar, Visnagar dated 17th November, 1975. Therefore, when the respondent No.1 is not taking any objection against the order of Mamlatdar, Visnagar dated 17th November, 1975, according to my opinion, the order passed by the Gujarat Revenue Tribunal in Revision Application No.1015 / 1984 dated 31st December, 1987 requires to be set aside because the revision application was filed by the respondent No.1 and the respondent No.1 is now agreed to accept the order passed by the Mamlatdar, Visnagar dated 17th November, 1975. Therefore, the order passed by the revisional authority dated 31st December, 1987 in Revision Application [Tenancy] No. 1015 / 1984 is hereby quashed and set aside. The agreement which has been arrived at between the parties dated 1st February, 2001 has been taken on record with a direction to the petitioner and the respondent No.1 to strictly abide by all the terms of the said agreement dated 1st February, 2001 and also directed to the petitioner and the respondent No.1 to implement the terms of the agreement arrived at between the parties and same are binding to the parties. In view of above observations and direction, Rule issued in the present petition is made absolute in terms of the agreement.

Date : 4-9-2001 [H.K.Rathod, J.]

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